

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ROBERT WASHINGTON,  
  
Plaintiff,  
  
v.  
  
STEVEN M. YAPLEE,  
  
Defendant.

Case No. 1:20-cv-01356-EPG (PC)

ORDER REQUIRING PLAINTIFF TO FILE  
OPPOSITION OR STATEMENT OF NON-  
OPPOSITION TO DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT

Robert Washington ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983.

On March 4, 2022, Defendant filed a motion for summary judgment. (ECF No. 37). Plaintiff had thirty days to file his response. (ECF No. 28, p. 5). On March 30, 2022, Plaintiff filed a motion for an extension of time to file his response. (ECF No. 39). Plaintiff's motion was granted, and Plaintiff was given until May 6, 2022, to file his response. (ECF No. 40). As noted by Defendant (ECF No. 41), Plaintiff's deadline to file his response has passed and Plaintiff has not filed a response to the motion for summary judgment.

While a motion for summary judgment cannot be granted by default, Heinemann v. Satterberg, 731 F.3d 914, 916 (9th Cir. 2013), the Court does have other options when a party fails to respond. For example, if Plaintiff fails to respond, the Court may treat the facts asserted by Defendant as "undisputed for purposes of the motion." Fed. R. Civ. P. 56(e)(2). Alternatively, if Plaintiff fails to oppose the motion or file a statement of non-opposition, the

1 Court may recommend that this case be dismissed for failure to prosecute and failure to comply  
2 with a court order.

3 However, the Court will not impose any sanctions or treat the facts asserted by Defendant  
4 as undisputed at this time. Instead, the Court will give Plaintiff one more opportunity to file a  
5 response.

6 Accordingly, based on the foregoing, IT IS HEREBY ORDERED that:

- 7 1. Within thirty days from the date of service of this order, Plaintiff shall file an  
8 opposition or a statement of non-opposition to Defendant's motion for summary  
9 judgment.
- 10 2. If Plaintiff fails to comply with this order, in ruling on Defendant's motion for  
11 summary judgment the Court may treat the facts asserted by Defendant in his  
12 motion for summary judgment as undisputed. Alternatively, the Court may  
13 recommend that this case be dismissed for failure to prosecute and failure to  
14 comply with a court order.

15 IT IS SO ORDERED.  
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17 Dated: May 20, 2022

18 /s/ Eric P. Gray  
19 UNITED STATES MAGISTRATE JUDGE  
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